

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MOD SUPER FAST PIZZA, LLC, a Delaware  
corporation,

Plaintiff,

v.

CARL CHANG, et al.

Defendants.

CASE NO. 12-CV-01359-TSZ

**THE LITTLE BROWN BOX PIZZA,  
LLC'S ANSWER TO SECOND  
AMENDED COMPLAINT**

**JURY DEMAND**

AND RELATED COUNTERCLAIMS

Defendant The Little Brown Box Pizza, LLC ("LBBP"), for itself and for no other defendant, hereby submits its Answer to plaintiff MOD Super Fast Pizza, LLC's ("MOD") Second Amended Complaint (the "Complaint"). Unless indicated differently, each paragraph below corresponds with the paragraph of the Complaint bearing the same number. To the extent that the unnumbered paragraphs, captions, and/or headings in the Complaint are treated as allegations, such paragraphs, captions, and headings are hereby denied.

1. LBBP admits that MOD purports to bring claims for trade dress infringement, misappropriation of trade secrets, and tortious interference with contractual relations, breach of contract, civil conspiracy, and permanent injunctive relief, but denies that MOD's claims have any merit.

2. LBBP admits that it owns and operates pizza restaurants in Southern California under the name “Pieology Pizzeria.” LBBP admits that Pieology Pizzeria is not connected to, affiliated with, or authorized by MOD. Except as expressly admitted and alleged herein, LBBP denies each and every allegation contained in the corresponding paragraph of the Complaint.

### I. PARTIES

1. LBBP lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

2. LBBP admits that Carl Chang is a resident of Southern California. Except as expressly admitted and alleged herein, LBBP denies the allegations contained in the corresponding paragraph of the Complaint.

3. LBBP lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

4. LBBP admits that Pieology Spectrum, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Rancho Santa Margarita, California. Except as expressly admitted and alleged herein, LBBP denies the allegations contained in the corresponding paragraph of the Complaint.

5. LBBP admits that The Little Brown Box, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Rancho Santa Margarita, California. LBBP admits that Pieology Spectrum, LLC is wholly-owned by LBBP. Except as expressly admitted and alleged herein, LBBP denies the allegations contained in the corresponding paragraph of the Complaint.

6. LBBP admits that Pieology Franchise, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Rancho Santa Margarita, California. LBBP admits that Pieology Franchise, LLC is wholly-

1 owned by LBBP, which is its sole member. Except as expressly admitted and alleged  
2 herein, LBBP denies the allegations contained in the corresponding paragraph of the  
3 Complaint.

## 4 II. JURISDICTION AND VENUE

5 1. The allegations contained in the corresponding paragraph of the Complaint  
6 are legal conclusions and require no response from LBBP. To the extent a response is  
7 required, LBBP admits that this Court has subject matter jurisdiction over the claims  
8 alleged in the Complaint.

9 2. The allegations contained in the corresponding paragraph of the Complaint  
10 are legal conclusions and require no response from LBBP. To the extent a response is  
11 required, LBBP denies that venue is proper in this judicial district.

12 3. The allegations contained in the corresponding paragraph of the Complaint  
13 are legal conclusions and require no response from LBBP. To the extent a response is  
14 required, LBBP denies the allegations contained in the corresponding paragraph of the  
15 Complaint.

## 16 III. FACTS

### 17 CREATION AND DEVELOPMENT OF MOD'S

#### 18 TRADE DRESS AND TRADE SECRETS.

19 1. LBBP lacks sufficient knowledge or information regarding the allegations  
20 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
21 basis, denies all such allegations.

22 2. LBBP lacks sufficient knowledge or information regarding the allegations  
23 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
24 basis, denies all such allegations.

25 3. LBBP lacks sufficient knowledge or information regarding the allegations  
26 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
27 basis, denies all such allegations.

1           4.       LBBP lacks sufficient knowledge or information regarding the allegations  
2 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
3 basis, denies all such allegations.

4           5.       LBBP denies that MOD restaurants feature a distinctive, non-functional  
5 combination of design, look, feel, menu, and style of service. LBBP lacks sufficient  
6 knowledge or information regarding the remaining allegations contained in the  
7 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
8 such allegations.

9           6.       LBBP denies that MOD owns any protectable trade dress. LBBP denies that  
10 MOD uses a distinctive, non-functional combination of features. LBBP lacks sufficient  
11 knowledge or information regarding the remaining allegations contained in the  
12 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
13 such allegations.

14           7.       LBBP admits that the articles quoted in the corresponding paragraph of the  
15 Complaint in all respects speak for themselves. LBBP denies that MOD owns any  
16 protectable trade dress. LBBP denies that the “recognition and popularity of the MOD trade  
17 dress is evident” from the articles quoted in the corresponding paragraph of the Complaint.  
18 LBBP lacks sufficient knowledge or information regarding the remaining allegations  
19 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
20 basis, denies all such allegations.

21           8.       LBBP denies each and every allegation contained in the corresponding  
22 paragraph of the Complaint.

23           9.       LBBP lacks sufficient knowledge or information regarding the allegations  
24 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
25 basis, denies all such allegations.

26  
27

**DEFENDANTS' BACKGROUND WITH MOD**

10. LBBP lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

11. LBBP lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

12. LBBP lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

13. LBBP lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

14. LBBP lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

15. LBBP lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

16. LBBP lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

17. LBBP lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

18. LBBP admits that LBBP and James Markham entered an agreement on or about March 1, 2010, and that that agreement in all respects speaks for itself. Except as

1 expressly admitted and alleged herein, LBBP denies the remaining allegations of the  
2 corresponding paragraph of the Complaint.

3 19. LBBP admits that LBBP and James Markham entered an agreement on or  
4 about June 21, 2010, and that that agreement in all respects speaks for itself. LBBP admits  
5 that LBBP complied with its obligations under the agreement, and that it claims ownership  
6 of the assets purchased therein. Except as expressly admitted and alleged herein, LBBP  
7 denies the remaining allegations of the corresponding paragraph of the Complaint.

8 20. LBBP lacks sufficient knowledge or information regarding the allegations  
9 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
10 basis, denies all such allegations.

11 21. LBBP lacks sufficient knowledge or information regarding the allegations  
12 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
13 basis, denies all such allegations.

#### 14 **DEFENDANTS' UNLAWFUL ACTIVITIES**

15 22. LBBP admits that Pieology Spectrum, LLC was formed in March 2010.  
16 LBBP admits that the agreements between defendants and Mr. Markham in all respects  
17 speak for themselves. LBBP lacks sufficient knowledge or information regarding the  
18 remaining allegations contained in the corresponding paragraph of the Complaint to admit or  
19 deny, and, on that basis, denies all such allegations.

20 23. LBBP admits that LBBP and James Markham entered into an agreement on  
21 or about June 21, 2010, and that that agreement in all respects speaks for itself. LBBP  
22 admits that LBBP complied with its obligations under the agreement, and that it claims  
23 ownership of the assets purchased therein. LBBP lacks knowledge or information sufficient  
24 to admit or deny the remaining allegations of the corresponding paragraph of the Complaint,  
25 and, on that basis, denies all such allegations.

26 24. LBBP admits that Pieology Pizzeria in Fullerton, California opened in 2011.  
27 LBBP denies utilizing, relying on, sharing, taking advantage of, exploiting, or

1 communicating to third parties any confidential information or trade secrets belonging to  
2 MOD. LBBP lacks sufficient knowledge or information regarding the allegations contained  
3 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies  
4 all such allegations.

5 25. LBBP admits that James Markham is not a member of Pieology Spectrum,  
6 LLC, and that he has no ownership interest in or professional role with Pieology Pizzeria.  
7 LBBP admits that Carl Chang has an indirect ownership interest in Pieology Spectrum,  
8 LLC, and Pieology Pizzeria, and that he is involved in the operation of the same. LBBP  
9 denies that it is engaging in the “unauthorized exploitation of MOD’s intellectual property,  
10 including its trade dress, trade secrets, [or] confidential information.” LBBP lacks sufficient  
11 knowledge or information regarding the allegations contained in the corresponding  
12 paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

13 26. LBBP admits that the Pieology website states that, *inter alia*, “Pieology  
14 prides itself on providing the best tasting, healthiest kustom pizza in the world. Using only  
15 the freshest ingredients, Pieology provides smoking hot pizzas in under 5 minutes.” LBBP  
16 further admits that the Pieology website in all respects speaks for itself.

17 27. LBBP denies that Pieology’s design, look, feel, menu, and/or style of service  
18 are confusingly similar to MOD’s restaurants.

19 a. LBBP admits that Pieology offers individualized pizzas, made to  
20 order, cooked at a temperature sufficient to cook a pizza in approximately five minutes, in  
21 ovens visible to the customer, and served within approximately five minutes. LBBP lacks  
22 sufficient knowledge or information about MOD’s restaurants to admit or deny the  
23 allegations regarding MOD’s restaurants, and, on that basis, denies those allegations.  
24 Except as expressly admitted and alleged herein, LBBP denies the allegations contained in  
25 the corresponding paragraph of the Complaint.

26 b. LBBP admits that Pieology offers plain cheese pizza at one price, and  
27 that it offers pizzas with unlimited toppings at a second price. LBBP lacks sufficient

1 knowledge or information about MOD's restaurants to admit or deny the allegations  
2 regarding MOD's restaurants, and, on that basis, denies those allegations.

3 c. LBBP admits Pieology offers seven pizzas with pre-determined  
4 toppings, that it identifies these pizzas by number, and that six of these pizzas are the same  
5 price as pizza with unlimited toppings. LBBP admits that the Pieology's #3 pizza has bbq  
6 sauce, chicken, mozzarella, gorgonzola, red onion, and cilantro. LBBP lacks sufficient  
7 knowledge or information about MOD's restaurants to admit or deny the allegations  
8 regarding MOD's restaurants, and, on that basis, denies those allegations. Except as  
9 expressly admitted and alleged herein, LBBP denies the allegations contained in the  
10 corresponding paragraph of the Complaint.

11 d. LBBP admits that Pieology offers "strips" made from pizza dough  
12 and topped with either herb butter or a cinnamon sugar sauce. LBBP lacks sufficient  
13 knowledge or information about MOD's restaurants to admit or deny the allegations  
14 regarding MOD's restaurants, and, on that basis, denies those allegations. Except as  
15 expressly admitted and alleged herein, LBBP denies the allegations contained in the  
16 corresponding paragraph of the Complaint.

17 e. LBBP admits that Pieology offers salads. LBBP lacks sufficient  
18 knowledge or information about MOD's restaurants to admit or deny the allegations  
19 regarding MOD's restaurants, and, on that basis, denies those allegations.

20 f. LBBP denies each and every allegation contained in the  
21 corresponding paragraph of the Complaint.

22 g. LBBP denies each and every allegation contained in the  
23 corresponding paragraph of the Complaint.

24 h. LBBP admits that, at one time, Pieology sold individually wrapped  
25 Hostess "Ding Dongs" for \$1.00. LBBP admits that Pieology displayed the Ding Dongs on  
26 a circular place near the cash register. LBBP lacks sufficient knowledge or information  
27 about MOD's restaurants to admit or deny the allegations regarding MOD's restaurants, and,



1 on that basis, denies those allegations. Except as expressly admitted and alleged herein,  
2 LBBP denies the allegations contained in the corresponding paragraph of the Complaint.

3 i. LBBP admits that Pieology serves its pizzas on a round tray lined  
4 with paper with the customer's name written in black marker, and that a server shouts the  
5 customer's name when an order is ready. LBBP lacks sufficient knowledge or information  
6 about MOD's restaurants to admit or deny the allegations regarding MOD's restaurants, and,  
7 on that basis, denies those allegations. Except as expressly admitted and alleged herein,  
8 LBBP denies the allegations contained in the corresponding paragraph of the Complaint.

9 j. LBBP lacks sufficient knowledge or information about the allegations  
10 in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies  
11 all such allegations.

12 28. LBBP denies each and every allegation contained in the corresponding  
13 paragraph of the Complaint.

14 29. LBBP lacks sufficient knowledge or information regarding the allegations  
15 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
16 basis, denies all such allegations.

17 30. To the extent that the allegations in the corresponding paragraph of the  
18 Complaint are directed to LBBP, LBBP denies those allegations. LBBP lacks sufficient  
19 knowledge or information regarding the remaining allegations contained in the  
20 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
21 such allegations.

22 31. LBBP admits that the Pieology website states that it is "fast expanding."  
23 LBBP admits that it is pursuing opportunities for additional locations and potential franchise  
24 opportunities, and further admits that Franchise has entered into franchise agreements and  
25 development rights agreements on behalf of Defendants. LBBP admits that Franchise was  
26 formed in 2012, and further admits that Franchise receives franchise fees and royalties from  
27

franchisees. Except as expressly admitted and alleged herein, LBBP denies the allegations contained in the corresponding paragraph of the Complaint.

#### IV. CLAIMS AND CAUSES OF ACTION

##### **Count 1: Trade Dress Infringement Under 15 U.S.C. § 1125(a)**

1. In response to the corresponding paragraph of the Complaint, LBBP hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

2. LBBP denies each and every allegation contained in the corresponding paragraph of the Complaint.

3. LBBP denies each and every allegation contained in the corresponding paragraph of the Complaint.

4. LBBP denies each and every allegation contained in the corresponding paragraph of the Complaint.

5. LBBP denies that MOD has been damaged. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to LBBP, LBBP denies those allegations. LBBP lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

6. LBBP denies that MOD has been damaged. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to LBBP, LBBP denies those allegations. LBBP lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

##### **Count 2: Misappropriation of Trade Secrets Under RCW 19.108 et seq.**

7. In response to the corresponding paragraph of the Complaint, LBBP hereby repeats and incorporates herein by reference, the responses to the preceding paragraphs, as though fully set forth herein.

1           8.       LBBP lacks sufficient knowledge or information regarding the allegations  
2 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
3 basis, denies all such allegations.

4           9.       LBBP lacks sufficient knowledge or information regarding the allegations  
5 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
6 basis, denies all such allegations.

7           10.      LBBP lacks sufficient knowledge or information regarding the allegations  
8 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
9 basis, denies all such allegations.

10          11.      To the extent that the allegations in the corresponding paragraph of the  
11 Complaint are directed to LBBP, LBBP denies those allegations. LBBP lacks sufficient  
12 knowledge or information regarding the remaining allegations contained in the  
13 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
14 such allegations.

15          12.      To the extent that the allegations in the corresponding paragraph of the  
16 Complaint are directed to LBBP, LBBP denies those allegations. LBBP lacks sufficient  
17 knowledge or information regarding the remaining allegations contained in the  
18 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
19 such allegations.

20          13.      LBBP denies that MOD has been damaged. To the extent that the allegations  
21 in the corresponding paragraph of the Complaint are directed to LBBP, LBBP denies those  
22 allegations. LBBP lacks sufficient knowledge or information regarding the remaining  
23 allegations contained in the corresponding paragraph of the Complaint to admit or deny,  
24 and, on that basis, denies all such allegations.

**Count 3: Tortious Interference with Contractual Relations**

14. In response to the corresponding paragraph of the Complaint, LBBP hereby repeats and incorporates herein by reference the responses the preceding paragraphs, as though fully set forth herein.

15. LBBP lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

16. LBBP lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

17. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to LBBP, LBBP denies those allegations. LBBP lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

18. LBBP denies that MOD has been damaged. To the extent that the allegations in the corresponding paragraph of the Complaint are directed to LBBP, LBBP denies those allegations. LBBP lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

**Count 4: Breach of Contract**

19. In response to the corresponding paragraph of the Complaint, LBBP hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

20. LBBP denies that it entered any contractual agreements with MOD. LBBP lacks sufficient knowledge or information regarding the remaining allegations contained in

1 the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
2 such allegations.

3 21. To the extent that the allegations in the corresponding paragraph of the  
4 Complaint are directed to LBBP, LBBP denies those allegations. LBBP lacks sufficient  
5 knowledge or information regarding the remaining allegations contained in the  
6 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
a8 such allegations.

8 22. To the extent that the allegations in the corresponding paragraph of the  
9 Complaint are directed to LBBP, LBBP denies those allegations. LBBP lacks sufficient  
10 knowledge or information regarding the remaining allegations contained in the  
11 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
12 such allegations.

13 23. LBBP denies each and every allegation contained in the corresponding  
14 paragraph of the Complaint.

15 24. LBBP denies that MOD has been damaged. To the extent that the allegations  
16 in the corresponding paragraph of the Complaint are directed to LBBP, LBBP denies those  
17 allegations. LBBP lacks sufficient knowledge or information regarding the remaining  
18 allegations contained in the corresponding paragraph of the Complaint to admit or deny,  
19 and, on that basis, denies all such allegations.

20 **Count 5: Civil Conspiracy**

21 25. In response to the corresponding paragraph of the Complaint, LBBP hereby  
22 repeats and incorporates herein by reference the responses to the preceding paragraphs, as  
23 though fully set forth herein.

24 26. To the extent that the allegations in the corresponding paragraph of the  
25 Complaint are directed to LBBP, LBBP denies those allegations. LBBP lacks sufficient  
26 knowledge or information regarding the remaining allegations contained in the  
27

1 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
2 such allegations.

3 27. To the extent that the allegations in the corresponding paragraph of the  
4 Complaint are directed to LBBP, LBBP denies those allegations. LBBP lacks sufficient  
5 knowledge or information regarding the remaining allegations contained in the  
6 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
7 such allegations.

8 28. LBBP denies that MOD has been damaged. To the extent that the allegations  
9 in the corresponding paragraph of the Complaint are directed to LBBP, LBBP denies those  
10 allegations. LBBP lacks sufficient knowledge or information regarding the remaining  
11 allegations contained in the corresponding paragraph of the Complaint to admit or deny,  
12 and, on that basis, denies all such allegations.

13 **Count 6: Permanent Injunctive Relief**

14 29. In response to the corresponding paragraph of the Complaint, LBBP hereby  
15 repeats and incorporates herein by reference the responses to the preceding paragraphs, as  
16 though fully set forth herein.

17 30. LBBP denies that MOD has been damaged. To the extent that the allegations  
18 in the corresponding paragraph of the Complaint are directed to LBBP, LBBP denies those  
19 allegations. LBBP lacks sufficient knowledge or information regarding the remaining  
20 allegations contained in the corresponding paragraph of the Complaint to admit or deny,  
21 and, on that basis, denies all such allegations.

22 31. The allegations contained in the corresponding paragraph of the Complaint  
23 are legal conclusions and require no response from LBBP. To the extent a response is  
24 required, LBBP denies the allegations contained in the corresponding paragraph of the  
25 Complaint.

26 32. The allegations contained in the corresponding paragraph of the Complaint  
27 are legal conclusions and require no response from LBBP. To the extent a response is

1 required, LBBP denies the allegations contained in the corresponding paragraph of the  
2 Complaint.

### 3 **V. AFFIRMATIVE DEFENSES**

4 In further answer to the Complaint, LBBP asserts the following separate and  
5 affirmative defenses. Defendant deserves the right to raise additional affirmative defenses  
6 as they become known to it through discovery or investigation.

#### 7 FIRST AFFIRMATIVE DEFENSE

8 1. LBBP cannot be liable for the damages, if any, alleged in the Complaint and  
9 in each and every cause of action therein because each and every cause of action fails to  
10 state a claim and/or cause of action upon which relief may be granted.

#### 11 SECOND AFFIRMATIVE DEFENSE

12 2. LBBP alleges that each of MOD's purported claims for relief is frivolous and  
13 unsupported.

#### 14 THIRD AFFIRMATIVE DEFENSE

15 3. The Complaint, and each and every claim and cause of action alleged therein,  
16 is barred by the doctrine of waiver.

#### 17 FOURTH AFFIRMATIVE DEFENSE

18 4. All of MOD's purported causes of action against LBBP are barred by the  
19 applicable statutes of limitations.

#### 20 FIFTH AFFIRMATIVE DEFENSE

21 5. The Complaint, and each and every claim and cause of action alleged therein,  
22 is barred by the doctrine of estoppel.

#### 23 SIXTH AFFIRMATIVE DEFENSE

24 6. The Complaint, and each and every claim and cause of action alleged therein,  
25 is barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

7. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

8. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of acquiescence.

NINTH AFFIRMATIVE DEFENSE

9. MOD's alleged trade dress is not protectable trade dress, including, and without limitation, because the alleged trade dress is non-distinctive, lacks secondary meaning, lacks secondary meaning in the geographic area where the Pieology restaurants are located, and/or is both utilitarian and aesthetically functional.

TENTH AFFIRMATIVE DEFENSE

10. MOD's alleged trade secrets are not protectable trade secrets.

ELEVENTH AFFIRMATIVE DEFENSE

11. Each of MOD's purported causes of action against LBBP fails because LBBP has complied with all of its legal obligations with respect to MOD.

TWELFTH AFFIRMATIVE DEFENSE

12. MOD has not been damaged in the sums or manner alleged, or in any sum or manner, or at all.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Upon information and belief, LBBP states that MOD failed to mitigate, reduce, or avoid its damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Any injury or damage suffered or sustained by MOD, either as alleged in the Complaint or at all, was directly and proximately caused and contributed to by persons and entities other than LBBP.



FIFTEENTH AFFIRMATIVE DEFENSE

15. The Complaint, and each and every claim and cause of action alleged therein, is barred because the Court lacks personal jurisdiction over LBBP.

SIXTEENTH AFFIRMATIVE DEFENSE

16. The Complaint, and each and every claim and cause of action allege therein, is barred because venue is improper in this Court.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. LBBP alleges that it cannot fully anticipate all affirmative defenses that may be applicable to this action based upon the conclusory allegations contained in the Complaint. Accordingly, LBBP expressly reserves the right to assert further defenses if, and to the extent that such affirmative defenses become available.

**VI. PRAYER FOR RELIEF**

WHEREFORE, defendant LBBP prays for judgment as follows:

- A. That MOD take nothing by its Complaint and that judgment be entered in favor of LBBP;
- B. That LBBP be awarded its costs and attorneys' fees incurred herein; and
- C. That the Court grant such other relief as it deems just and proper.

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**VII. JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38 LBBP demands a trial by jury on all issues so triable.

DATED: November 26, 2013

JEFFER MANGELS BUTLER & MITCHELL LLP

By: /s/ JESSICA BROMALL SPARKMAN

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